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SUPREME COURT OF THE UNITED STATES

TERM COMMENCING OCTOBER 2000

ALFREDA TILLMAN BESTER
Petitioner

VERSUS

LOUISIANA SUPREME COURT
COMMITTEE ON BAR ADMISSIONS
Respondent

ON PETITION FOR WRIT OF CERTIORARI FROM THE SUMMARY DISMISSAL OF ORIGINAL ACTION BY THE LOUISIANA SUPREME COURT NUMBER 00-OB-1361

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The issues in this case are:

1. Whether the arbitrary denial of the fundamental right of access to any State court deprives a Plaintiff of Due Process of Law under the United States Constitution, Amendment XIV, § 1 ; and
2. Whether denial of access to any court for redress of grievances related to a state contractual obligation Impairs the Obligation of Contracts as precluded under the United States Constitution, Article I, § 10, Clause 1.

PARTIES TO THE PROCEEDING

To the best of this Petitioner's knowledge, the parties to this proceeding are as follows:

1. Alfreda Tillman Bester, Petitioner

2. Louisiana Supreme Court Committee on Bar Admissions, Respondent, which is now composed of and/or at the time of events giving rise to this cause of action was composed of the following individuals:
   a. Daniel A. Webb, Chairman and Immediate Past Secretary/Director of Character and Fitness
   b. Michael A. Patterson, Immediate Past Chairman
   c. Robert J. David, Jr., Director of Accommodations
   d. Rebecca L. Hudsmith, Examiner
   e. Scott T. Whittaker, Examiner
   f. Billy J. Domingue, Examiner
   g. David E. Walle, Examiner
   h. Harry J. "Skip" Phillips, Jr., Past Examiner and currently Secretary/Director of Character and Fitness
   i. Richard A. Goins, Examiner
   j. William T. McNew, Examiner
   k. Piper D. Griffin, Examiner
   l. C. Allen Hennery, Examiner
   m. Judith Atkinson, Examiner
   n. Denise S. Leeper, Bar Admissions Administrator

The Louisiana Supreme Court Committee on Bar Admissions has proceeded below as a single entity represented by a team of attorneys. None of the individuals listed above have been personally named as defendants or parties hereto.

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CITATION OF ORDERS BELOW

Bester v. Louisiana Supreme Court Committee on Bar Admissions, 2000-OB-1361, (La. 5/24/2000), *Reconsideration denied* 10/13/2000.

I. JURISDICTION

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . . U.S. Const. art. III, § 2, cl. 1.

This case arises under the United States Constitution, Article I, § 10 Clause 1, the Contract Clause, and the Due process clause of the United States Constitution, Amendment XIV, § 1.

> Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. Sup. Ct. R. 13(1)

> The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing. . . . Sup. Ct. R. 13(3)

The Louisiana Supreme Court, the court of original jurisdiction and the state court of last resort, summarily denied Alfreda Tillman Bester's original petition on May 24, 2000. (Exhibit 1). Bester's timely petition for rehearing/reconsideration was denied and

dismissed in its entirety on October 13, 2000 (See Exhibit 2), less than 90 days before this petition for writ of certiorari was filed in the United States Supreme Court.

II. CONSTITUTIONAL PROVISIONS INVOLVED

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . . U.S. Const. art. III, § 2, cl. 1.
>
> No state shall . . . pass any . . . law impairing the Obligation of Contracts . . . . U.S. Const. art. I, § 10, cl. 1.
>
> . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law.... U.S. Const. Amend. XIV, § 1.

III. STATEMENT OF THE CASE

Alfreda Tillman Bester, Petitioner, graduated on May 15, 1999 in the top 7% of her law school class.

On May 16, 2000, petitioner filed an original petition with the Louisiana Supreme Court under the rules of that court, seeking to "appeal"[1] a decision of the Louisiana Supreme Court's Committee on

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[1]This action was labeled an "appeal" in accordance with the ***administrative/procedural*** Rules of the Louisiana Supreme Court. It is, however, not an appeal in an adjudicative sense, because no trial court, nor any other lower court had ever issued any ruling in

Bar Admissions ("the Committee") that she did not satisfactorily complete the totally subjective February 2000 Louisiana State Bar Exam.

On May 24, 2000, the Louisiana Supreme Court, the court of original jurisdiction and the state court of last resort, summarily dismissed Bester's petition without holding a hearing, without taking any evidence, without allowing for discovery, and without requiring or allowing the named defendant— a Committee appointed by the Louisiana Supreme Court— to file an answer.

On June 6, 2000, Petitioner filed a motion for rehearing/reconsideration at the Louisiana Supreme Court. Petitioner alleged, inter alia, a violation of United States Constitution, Article I, § 10, Clause 1, Impairment of the Obligation of Contracts and denial of due process of law under United States Constitution, Amendment XIV, § 1.

On October 13, 2000, the Louisiana Supreme Court, again, without holding a hearing, without taking any evidence, and without

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this matter.

allowing for discovery, denied and dismissed Bester's petition.

The Louisiana Supreme Court is both the court of original jurisdiction and the court of last resort on this issue. There is no appeal available to the plaintiff when the court of last resort in the state is the court that made the original decision. The original decision is the final decision. That court's summary denial of the original petition in this matter denies Petitioner access to any state court for redress of her grievances and, in effect, denies her due process of law.

IV. ARGUMENT

Petitioner herein presents a compelling reason for this court to hear this case because the Louisiana Supreme Court has issued an arbitrary and capricious ruling on important federal questions— the Due Process provision of the United States Constitution, Amendment XIV, § 1. and United States Constitution, Article I, § 10, Clause 1— in a manner that conflicts with relevant decisions by the United States Supreme Court. [2] Because the Louisiana Supreme Court is both the

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[2]Sup. Ct. R. 10(c). See *Chambers v. Baltimore and Ohio R.R.*, 207 U.S. 142, 148 (1907); *Societe Internationale v. Rogers*, 357 U.S. 197, 209 (1958); *United Mine Workers v. Michigan Bar*, 401 U.S. 576, 585 (1971); *Hague v. C.I.O.*, 307 U.S. 496, 513

court of original jurisdiction and the state court of last resort, and has summarily dismissed Petitioner's original petition and her petition for reconsideration without holding a hearing, without considering any evidence, and without allowing for discovery, Petitioner has effectively been denied access to any state court for redress of her grievances. Further, there is no other remedy, adjudicative or otherwise, under state law for Petitioner to seek redress of her grievances, as the Louisiana Supreme Court has claimed exclusive and original jurisdiction over all matters related to the admission of qualified applicants to the practice of law in Louisiana. *In Re Bar Exam Class Action*, 752 So.2d 159, (99-2880 La. 2/18/00).

A. 14TH AMENDMENT DUE PROCESS

> . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . . U.S. Const. amend. XIV, § 1.
>
> All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights. La. Const. art. I, § 22

(1939).

> The Supreme court has general supervisory jurisdiction over all courts. It may establish procedural and administrative rules not in conflict with law. . . . La. Const. art. V, § 5(A).
>
> Upon notice to the applicant by the Committee that an applicant has failed to fulfill one or more of the requirements of Sections 3, or 5, . . . the applicant may appeal by petition directly to the Court. La. Sup. Ct. R. 17, § 9.
>
> The court may, in its discretion, without taking further evidence, affirm or reverse the Committee's recommendation, remand to the Committee for further action as the Court instructs, or appoint a Commissioner to take evidence. La. Sup. Ct. R. 17, § 9(B) [In pertinent part].

Louisiana Supreme Court Rule 17, § 9 confers upon Petitioner as an applicant for admission to the practice of law in Louisiana, the right/liberty, to appeal "directly to the [Louisiana Supreme] Court" under its "exclusive and plenary power . . . to define and regulate all facets of the practice of law, including the admission of attorneys to the bar. . . ." *In Re Bar Exam Class Action*, 752 So.2d 159, 160, (99-2880 La. 2/18/00). The legislature is precluded from enacting any law that "deprive[s] any person of life, liberty, or property, without due process of law" under Louisiana Constitution of 1974, Article I, §22. The Louisiana Supreme Court is precluded under Louisiana Constitution of 1974, Article V, § 5(A) from establishing any rule that

is "in conflict with law." It would logically follow that the Louisiana Supreme Court is also precluded from establishing any rule that would "deprive any person of life, liberty, or property, without due process of law." Therefore, Louisiana Supreme Court Rule 17, § 9(B), which allows the Court to "affirm or reverse the Committee's recommendation" "without taking further evidence" is unconstitutional on its face. This rule deprives Petitioner of her fundamental right of access to the courts in violation of United States Constitution, Amendment XIV, § 1.

The right of access to the courts is one of the fundamental rights protected by the Constitution and is basic to our system of government. Only a compelling state interest will justify intrusions upon the fundamental right of access to the courts, as it is guaranteed and protected from unlawful interference and deprivations by the State. *Ryland v. Shapiro*, (La. 1983), 708 F.2d 967, on remand 586 F. Supp. 1495. The Louisiana Supreme Court in denying Petitioner herein a hearing on its original jurisdiction, deprived Petitioner of her fundamental right to access to any court in Louisiana and therefore,

must articulate a compelling state interest.

Accommodation of the sound administration of justice to a party's rights to due process and a fair trial necessarily involves deliberate judgment based on facts and circumstances in each case. *State v. Stetson*, (La. 1975), 317 So. 2d 172. The Louisiana Supreme Court refused to deliberate based on facts and the circumstances of this case. Therefore, the court has refused to accommodate "the sound administration of justice" in petitioner's pursuit to exercise her "rights to due process and a fair trial".

> Under its inherent judicial power and its original jurisdiction, the Supreme Court of Louisiana has exclusive authority to regulate the practice of law in this state. This broad grant of regulatory power includes the responsibility to exert control by adjudicatory means of individual cases as they arise...." *O'Rourke v. Cairns*, 683 So.2d 697, 700 (La. 1996). [Original Citations omitted].

Adjudication "implies a hearing by a court, after notice, of legal evidence on the factual issues involved. It contemplates that the claims of all the parties thereto have been considered and set to rest." Black's Law Dictionary (6th Ed. 1990). The Louisiana Supreme Court is the court of original jurisdiction here and was required to allow

petitioner an opportunity to be heard by the court on contradictory motion and consider all of the legal evidence on the factual issues involved, thus exerting control by adjudicatory means.

> [T]here are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause. *Societe Internationale v. Rogers*, 357 U.S. 197, 209 (1958).

On the contrary, the Louisiana Supreme Court has determined that Petitioner's fundamental right to request an adequate remedy in the courts of Louisiana would be denied without the benefit of contradictory hearing, and without the requirement that the named defendants be required to show cause why petitioner's request for relief should not be granted. Such ruling is in conflict with law as it arbitrarily denies the petitioner any opportunity to seek "an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights." U.S. Const. amend. XIV, § 1.; La. Const. art. I, § 22 & La. Const. art. V, § 5(A)

In Louisiana, a petition for redress of civil actions is generally

brought in the district court. However, the Louisiana Supreme Court has declared itself to have exclusive and original power over all matters related to the admission of attorneys to the practice of law in Louisiana. *In Re Bar Exam Class Action*, 752 So.2d 159, (99-2880 La. 2/18/00). Petitioner, therefore, had no remedy at the district court level and when the Louisiana Supreme Court summarily denied her an opportunity to have her grievances heard in that court, she was denied any opportunity to seek any remedy by due process of law and justice "without denial, partiality, or unreasonable delay, for injury to [her] in [her] person, property, reputation, or other rights" in the courts of Louisiana. La. Const. art. I, §22.

> Only where access to the judicial process is not necessary to the exercise of a fundamental constitutional right is the legislature free to allocate access to the judicial machinery on any system or classification which is not totally arbitrary. If there is a fundamental right at stake, then the State must be prepared to demonstrate a compelling governmental interest before access can be regulated. If there is, as demonstrated by the lack of such a state interest, an absence of a sufficient countervailing justification for the State's action, the denial of access will be a denial of due process. *State in the Interest of A.C.*, 643 So.2d 719, 728 (La. 1994) (Original citations omitted).
>
> [C]ollective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the

First Amendment. *United Mine Workers v. Michigan Bar*, 401 U.S. 576, 585 (1971).

Here, petitioner's fundamental right of access to the courts has been impaired. The Louisiana Legislature has never enacted a law restricting access to state courts for a plaintiff alleging breach of contract by the State of Louisiana. When the Louisiana Supreme Court, a part of the judicial branch of state government and the court of original jurisdiction (the trial court) in this matter, refused to hear this case, petitioner was denied access to any court in the State of Louisiana to seek "an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to [her] in [her] person, property, reputation, or other rights." La. Const. art. I, §22. Therefore, the state must demonstrate a compelling governmental interest or the denial of an adequate remedy is a denial of due process.

> The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to . . . its own citizens. *Chambers v. Baltimore and Ohio R.R.*, 207 U.S. 142, 148 (1907).

. . . [T]he Fourteenth Amendment . . . secured existing rights against state abridgment. . . .The right to peaceably assemble and petition for redress of grievances, . . ., are rights of the citizen guaranteed by the Federal Constitution. *Hague v. C.I.O.*, 307 U.S. 496, 513 (1939)

B. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

No state shall . . . pass any . . . law impairing the Obligation of Contracts . . . . U.S. Const., Art. I § 10 cl. 1.

No . . . law impairing the obligation of contracts shall be enacted." La. Const. art. I, § 23.

The legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. La. Const. art. III, § 1(A) [In pertinent part].

The judicial power is vested in a supreme court, courts of appeal, district courts and other courts authorized by this Article. La. Const. art. V, § 1.

The Court's constitutional authority to regulate the admission of qualified applicants to the Bar of this state shall be administered by the Committee on Bar Admissions of the Supreme Court of Louisiana. The Committee shall consist of fifteen (15) members of the Bar appointed by the Court on recommendation of the Louisiana State Bar Association. La. Sup. Ct. R. 17, §§ 1 & 1(A).

Upon notice to the applicant by the Committee that an applicant has failed to fulfill one or more of the requirements of Sections 3 or 5, . . . , and that the Committee concurs in such finding, the applicant may appeal by petition directly to the Court. • • • • The court may, in its discretion, without taking further

evidence, affirm or reverse the Committee's recommendation, remand to the Committee for further action as the Court instructs, or appoint a Commissioner to take evidence. La. Sup. Ct. R. 17, §§9 & 9(B) [In pertinent part].

States are precluded from enacting any law which impairs the obligation of contracts. U.S. Const., art. I § 10 cl. 1. The Louisiana Legislature, the branch government charged with the responsibility of making law under the State Constitution, is precluded from making any law that impairs the obligation of contracts. La. Const. art. I, § 23. The Louisiana Supreme Court, a part of the judicial branch of state government, is precluded from enacting any rule that would impair the obligation of contracts, as such rule would be "in conflict with law". La. Const. art. V § 5(A). Therefore, Louisiana Supreme Court Rule 17, § 9(B), which allows the Louisiana Supreme Court to "affirm or reverse the Committee's recommendation," "in its discretion, without taking further evidence" is unconstitutional on its face and "in conflict with law" when the affect of the application of that rule results in the impairment of the obligation of contracts.

1. Existence of a Contract

A contract is an agreement by two or more parties whereby

obligations are created, modified, or extinguished. A contract is bilateral, or synallagmatic, when the parties obligate themselves reciprocally, so that the obligation of each party is correlative to the obligation of the other. La. Civ. Code arts. 1906 and 1908.

An obligation is a legal relationship whereby . . . the obligor is bound to render a performance in favor of . . . the obligee. Performance may consist of giving, doing, or not doing something." La. Civ. Code art. 1756

Obligations arise from contracts and other declarations of will. They also arise directly from the law, regardless of a declaration of will, in instances such as wrongful acts, the management of affairs of another, unjust enrichment and other acts or facts. La. Civ. Code art. 1757

Every applicant for admission to the Bar of this state shall . . . satisfactorily complete the written examination as provided in Sections 7 and 8 of this Rule. La. Sup. Ct, R. 17, § 3(F). An applicant must receive a score of 70 or higher to pass each subject examination in Part I [the nine-part written examination]. La. Sup. Ct. R. 17, § 7(A)

Petitioner met all of the prerequisites to be eligible to take the Louisiana State Bar Exam. In exchange for the payment of $225 the petitioner (the obligee), and the Committee (the obligor), entered into a contract and reciprocally agreed that if Petitioner achieved a score of 70% or more on the requisite portions of Part I of the Louisiana State Bar Exam, the Committee (obligor) would be obligated to report

Petitioner to the court as having met all of the requirements for admission to the state bar. The Committee on Bar Admissions has a duty/obligation, inter alia, to (1)conduct regular written examinations; (2) report to the court, in writing, the names of all applicants whom the Committee finds to have met all requirements for admission to the Bar of this state; and (3) Publish the requirements for admission to the Bar of this state and the results of each examination. La. Sup. Ct. R. 17, § 2 (C)(D) & (E)

A public service (such as administration of the admission of applicants to the practice of law as performed by the Committee) is a matter within the control of the State of Louisiana. The State may perform the service itself, or delegate the responsibility to an appropriate agency such as the Committee on Bar Admissions. Even after the state has granted an exclusive franchise for the performance of a public service, it may retain control and regulation thereof as it affects public health, safety and morals. The Louisiana Supreme Court's rulings of May 24, 2000 and October 13, 2000 impair Petitioner's right to enforce the state's "obligation of contracts" by not

retaining and exercising control and regulation of the public function of admitting qualified applicants to the practice of law in Louisiana or by requiring that its appointed Committee fulfill its contractual obligation to Petitioner or prove its extinguishment. *New Orleans Waterworks Co. v. Rivers*, 115 U.S. 674 (1885); *New Orleans Gaslight Co. v. Louisiana Light & Heat Producing & Manufacturing Co.*, 115 U.S. 650 (1885); U.S. Const. art. 1, § 10, cl. 1; La. Const. Art V § 5(A); La. Civ. Code Art. 1831.

2. Burden of Proof

> A party who demands performance of an obligation must prove the existence of the obligation. The *party who asserts* that an obligation is null, or that it has been modified or extinguished, must prove the fact or acts giving rise to the nullity, modification, or extinction. La. Civ. Code art. 1831.

An obligation exists between Petitioner and the Committee. The Petitioner, the party demanding performance, was obligated, inter alia, to take and pass the nine-part written exam. La. Sup. Ct. R. 17, § 7(A). The Committee is obligated by virtue of its contract with petitioner and the duties conferred upon it by the Louisiana Supreme Court to "report to the court, in writing, the names of all applicants

whom the Committee finds to have met all requirements for admission to the Bar of this state." La. Sup. Ct. R. 17, § 2.

The Committee, a party to the above-referenced obligation, asserts that its obligation to report Petitioner to the Court as having "met all requirements for admission to the Bar of this state" was extinguished by Petitioner's alleged failure of the February 2000 Louisiana State Bar Exam. Therefore, the Committee, the party asserting that the obligation is extinguished, has the burden to prove "facts or acts giving rise to" that extinguishment. La. Civ. Code art. 1831

Petitioner has proven the existence of a contractual obligation between she and the Committee. The Committee must now prove the extinguishment of that contractual obligation based on a complete record of all evidence upon which its determination was based. Any rule of the Louisiana Supreme Court which precludes the Committee from being required to prove the extinguishment of that contractual obligation is in conflict with law as it impairs the obligations of contracts. U.S. Const. art. I, § 10, cl. 1; La. Const. Art I §§ 19 and

23; La. Const. Art V § 5(A); and La. Civ. Code Art. 1831

C. NO COMPELLING STATE INTEREST

There is no compelling state interest in preventing Alfreda Tillman Bester from having access to the courts for redress of her grievances against the Louisiana Supreme Court's Committee on Bar Admissions. When Bester took the Louisiana State Bar Exam in February 2000, there was no post exam remedy to contest a decision by the Committee on Bar Admissions, except to file an original petition at the Louisiana Supreme Court.

While this case was pending before the Louisiana Supreme Court, the Court, on the recommendation of it's Committee on Bar Admissions, implemented an administrative procedure for post-examination review. (See Exhibit 3). Obviously, if the court is now willing to allow future applicants a post-examination remedy to allay their concerns about possible discrepancies in the grading of their exams, there is no compelling reason why Bester should not have been allowed to pursue her claim against the Court's Committee for that same purpose- to allay her concerns about possible discrepancies in the

grading of her exam.

D. ABUSE OF DISCRETION

1. The Louisiana Supreme Court Created a New Law Which Could have the Affect of Aiding its Committee on Bar Admissions in the Obstruction of Justice.

> A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not . . . convey or permit others to convey the impression that they are in a special position to influence the judge. Model Code of Judicial Conduct, Canon 2 (A) and (B) [In pertinent part].

At the recommendation of its Committee on Bar Admissions and during the pendency of this lawsuit, on June 28, 2000 the Louisiana Supreme Court implemented a post-examination review procedure for applicants taking the July, 2000 Louisiana State Bar Exam. As a part of that administrative/procedural rule, the court included a provision that would allow its Committee to destroy evidence (previous bar exams) crucial to this lawsuit. This provision of the Court's procedural order of June 2000 would certainly shake a reasonable person's "confidence in the integrity and impartiality of the

judiciary." It appeared to be designed specifically to shield the Committee from allegations of wrongdoing in this case and to preclude this petitioner from exercising her fundamental right to have her grievance heard by a court of competent jurisdiction based on a complete record of all of the evidence, in violation the Due Process Clause of the United States Constitution, Amendment XIV, § 1.

Louisiana Public records are required to be maintained for a period of not less than three (3) years unless they are specifically excepted by law. La. R. S. 44:36(A)(1). There is no specific provision of Louisiana law that allows for the destruction of Louisiana State Bar Exams or any records associated therewith prior to the requisite three years. Therefore, the Louisiana Supreme Court's administrative/procedural rule of June 28, 2000 amounted to the creation of a new ex post facto law, encroaching upon the constitutional powers of the legislature, and was in conflict with existing Louisiana law which requires that public records be maintained for at least three (3) years.

2. The Louisiana Supreme Court, on its Own Motion, Denied Petitioner's Cause of Action in its entirety without Due Process of Law.

> A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. Model Code of Judicial Conduct, Canon 3 (B)(7) [In pertinent part].

After the initial summary dismissal on May 24, 2000 by the Louisiana Supreme Court, Petitioner filed a motion for rehearing/reconsideration on June 6, 2000.

When this petitioner sought discovery, the Court's Committee on Bar Admissions sought a protective order disguised as a "stay of discovery" on or about October 2, 2000. Subsequently, the Louisiana Supreme Court which had taken no action at all on this Cause of Action since May 24, 2000, on October 13, 2000, inexplicably on its own motion, without a hearing, and without any explanation or citation of any legal authority, denied and dismissed Bester's petition in its entirety. This dismissal violated Petitioner's right to due process of law in violation of the United States Constitution, Amendment XIV, § 1 and impaired her ability to enforce the state's Obligation of

Contracts in violation of United States Constitution, Article I, § 10, Clause 1 as it denied her access to any court for redress of her complaint that the Committee breached it contractual obligation.

3. Appearance of Ex Parte Communications.

> A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding. . . . Model Code of Judicial Conduct, Canon 3 (B)(7) [In pertinent part].

The Chief Justice of the Louisiana Supreme Court, the Immediate past Chair of the Committee on Bar Admissions, along with the present chair, and the Clerk of the Louisiana Supreme Court were co-defendants in a case entitled *Roberts v. Calogero*, 99-CA-3028 (La. App. 4th Cir. 2000), which sought injunctive relief for the release of Bar Exam documents under the Louisiana Public Records Act. La. R.S. 44:1 et seq. While the instant case was pending at the Louisiana Supreme Court, *Roberts v. Calogero* was pending at the Louisiana Fourth Circuit Court of Appeal. The same attorneys representing the Committee in the instant case, also represented all of the defendants,

including Chief Justice Pascal Calogero, in the *Roberts v. Calogero* case. There must necessarily have been ex parte communications regarding Bar admission procedures between the Louisiana Supreme Court, the Court's Committee on Bar Admissions, the Clerk of the Supreme Court and the defense attorneys in this matter during the pendency of the instant action. In fact, in at least one conversation with a federal district court judge [3], Clifton Bingham, lead counsel for

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[3]The referenced federal action entitled *Bester v. Louisiana Supreme Court Committee on Bar Admissions*, No. 00-2125, (E.D. La. 2000), sought injunctive relief to prevent the Committee on Bar Admissions from obstructing justice by destroying crucial evidence before a hearing could be held in this matter. The Louisiana Supreme Court issued an Administrative/Procedural Order under its rule-making authority on June 28, 2000 allowing for the destruction of all previous exams after the July 2000 exam was administered. After being assigned to six different judges, the Federal District Court held that it did not have jurisdiction to enjoin the Committee. In a subsequent appeal to the Federal Fifth Circuit Court of Appeals, on motion by the Louisiana Supreme Court's Committee on Bar Admission, Alfreda Tillman Bester's appeal of right was summarily dismissed without comment and without citation of any legal authority. When Ms. Bester requested written reasons for judgment from the three judge panel of the Fifth Circuit, she received an unsigned order, purportedly entered by the Fifth Circuit Court of Appeals stating "IT IS ORDERED that appellant's motion for written reasons for judgment is *denied*." *Bester v. Louisiana Supreme Court Committee on Bar Admissions*, No. 00-30886, (5th Cir. 2000).

the Committee in this matter and lead counsel for the defendants in *Roberts v. Calogero,* upon being asked by the federal district judge to voluntarily delay destruction of evidence essential to this case until the Federal District Court could rule on a request for a temporary restraining order, stated that he had spoken with the Chair of the Committee on Bar Admissions, but that he could not immediately agree to voluntary restraint because he, Mr. Bingham, had not yet spoken with "the Court."

It should also be noted that the Louisiana Supreme Court's "interim review procedure" implemented June 28, 2000, upon the signature of the Chief Justice, was done during the pendency of the instant lawsuit at "the recommendation of the Committee on Bar Admissions. . . ." (See Exhibit 3).

4. Inherent Conflict of Interest.

There is an inherent conflict of interest for the Louisiana Supreme Court to have exclusive and original jurisdiction over decisions of the Court's Committee. The Louisiana Supreme Court appointed each member of this Committee and is responsible for their

activities. This exclusive and original jurisdiction invites abuse because there is no appeal mechanism for any decision made by the court of original jurisdiction (the trial court).

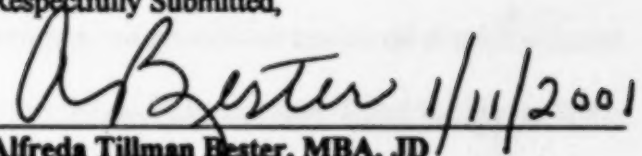
If the Louisiana Supreme Court may, in its discretion, without taking additional evidence, summarily dismiss allegations of wrongdoing by its Committee on Bar Admissions, citizens whose fundamental and constitutionally protected rights and liberties are violated, as is the case with Alfreda Tillman Bester, are denied access to any court in the State of Louisiana, a denial of due process under the United States Constitution, Amendment XIV, § 1; and in this case, an impairment of the obligation of contracts in violation of United States Constitution, Article I, § 10, Clause 1.

V. CONCLUSION

Petitioner in this case has been denied her fundamental right to access any state court for redress of her grievances in violation of the Due Process Clause of the United States Constitution, Amendment XIV, § 1. Further, such denial of access to the courts undeniably impairs the obligation of contracts in violation the United States Constitution, Article I, § 10, Clause 1.

The Supreme Court of the United States should grant this Petition for Writ of Certiorari in exercise of its authority under United States Constitution, Article III, § 2, Clause 1.

Respectfully Submitted,



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APPENDIX

The Supreme Court of the State of Louisiana

IN RE: ALFREDA TILLMAN BESTER

VS. NO. 2000-0B-1361

COMMITTEE ON BAR ADMISSIONS

IN RE: Bester, Alfreda Tillman; - Plaintiff; Applying for Petition in Appeal of Decision by the Committee on Bar Admissions that Petitioner did not Satisfactorily Complete the February 2000 Louisiana State Bar Exam

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May 24, 2000 (emphasis original)

Denied.

WFM
PFC
HTL
BJJ
JPV
CDT
JTK

KIMBALL, J., not on panel.

Supreme Court of Louisiana
May 24, 2000

s/ Rai T. Daigle
Deputy Clerk of Court
For the Court

Exhibit 1
aa

The Supreme Court of the State of Louisiana

IN RE: ALFREDA TILLMAN BESTER

VS. NO. 2000-0B-1361

COMMITTEE ON BAR ADMISSIONS

IN RE: Bester, Alfreda Tillman; - Applying for Reconsideration of this court's order dated May 24, 2000;

October 13, 2000

Reconsideration Denied.

HTL
PFC
CDK
BJJ
JPV
CDT
JTK

Supreme Court of Louisiana
October 13, 2000

s/ Katherine A. Fontana
Deputy Clerk of Court
For the Court

bb

Exhibit 2

SUPREME COURT OF LOUISIANA

ORDER**

Acting in accordance with Article V, Sections 1 and 5 of the 1974 Louisiana Constitution, and the inherent power of this Court, and considering the recommendation of the Committee on Bar Admissions to adopt an interim review procedure for Part I of the July 2000 Bar Examination,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

The following review procedure is hereby approved and adopted for the July 2000 Bar Examination:

REVIEW PROCEDURE FOR PART I OF THE LOUISIANA STATE BAR EXAMINATION

A. REPRESENTATIVE GOOD ANSWERS

As provided in the Assistant Examiner Handbook, published by the Committee on Bar Admissions, Assistant Examiners shall assign a numerical grade for each question and shall post the numerical

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cc

Exhibit 3

grade for each question in the margin of the examination booklets.

Each Assistant Examiner shall designate a representative good answer for each question graded. The Committee Examiner shall review representative good answers submitted by Assistant Examiners and select a representative good answer for each question on the examination. Representative good answers will be made available to failed applicants only during the review process. Neither the real nor fictitious name of the author of representative good answers will be revealed.

B. REVIEW

All failing Part I subject examination booklets will be retained by the Bar Admissions Administrator. Any applicant who fails or conditionally fails Part I shall have the right to review his/her failing examination booklets and the representative good answers for the failed examinations after making a written request. Written requests shall be made after October 6, 2000 and shall be accepted by the Bar Admissions Administrator until October 27, 2000. Thereafter, no

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requests will be considered.

The Bar Admissions Administrator shall then send a postcard to each applicant submitting a written request with the date and time for the applicant to review failed examination booklets. The Bar Admissions Administrator shall designate one makeup day for those unable to review failed examination booklets at the assigned time. If possible, the review should take place before December 1, 2000.

All reviews shall take place at the Louisiana Bar Center, 601 St. Charles Avenue, New Orleans, LA 70130. Reviews will be conducted between 8:30 a.m. and 12:00 noon and between 1:00 p.m and 4:30 p.m. Applicants must complete their review before the close of each session. Applicants must sign a receipt for all examination booklets and representative answers received for review. Applicants will not be allowed to copy or remove any Part I failed examination or representative answers. No person other than the applicant will be allowed to review his/her failed examination booklets or representative answers. No person other than the applicant will be allowed to

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participate in the review. Applicants must return all examination booklets and representative answers to the monitor before being allowed to sign out. Failure to comply with review procedures will be reported to the Director of Character and Fitness.

The decision of the Committee on Bar Admissions as to whether an applicant has passed or failed a bar examination shall be final.

All failing Part I examination booklets may be destroyed by the committee at any time following the scheduled date of the next bar examination.

No cause of action shall arise in favor of a failed bar applicant as a result of the applicant's exercise of the review rights conferred herein.

This interim rule shall become effective upon signing and shall remain in full force and effect until February 1, 2001 unless extended through future order of this court.

New Orleans, Louisiana, this 28th day of June, 2000.

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Exhibit 3

FOR THE COURT:

s/ Pascal F. Calogero, Jr.
Chief Justice

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